STATE OF NEW YORK
COUNTY OF MONROE COUNTY COURT

THE PEOPLE OF THE STATE OF NEW YORK

- vs -

SUSAN DAVID, LYN GALLO, MARILYN HILLER, GAIL NIESSNER, KATHLEEN RILEY, RAMONA SANTORELLI, SARA WELLS-HIMES,

DEFENDANTS.

APPEARANCES:

On Behalf of the People: ALAN CRUIKSHANK, ESQ.
Assistant District Attorney

On Behalf of the Defendants: SHARON KELLY SAYERS, ESQ.
Attorney at Law

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D E C I S I O N

EGAN, J. The people have moved for an order dismissing defendants' Notice of Appeal for failure to timely file, that is, within thirty days. CPL 460.10(1a), (1b) and (1d). Defendants' Notice of Appeal was filed on the sixty-second day. Defense by cross motion seeks an extension of time to file defendants' Notice of Appeal, CPL 460.30(1), or to accept the Notice of Appeal as timely filed.

The facts are not at issue. Each of the defendants directed the trial attorney to file an appeal which the attorney failed to do. Such failure constitutes "improper conduct" pursuant to CPL 460.30(1) allowing an extention of time for the taking of an appeal. See, People v. Mongomery, 24 NY 2d 130 (1969; People v. Corso, 40 NY 2d 578 (1976); and People v. Zanghi, _____ AD 2d _____ (4th Dept. March 16, 1990).

In Montgomery the majority stated, "The time has come for us to announce clearly that every defendant has a fundamental right to appeal his conviction and that, accordingly, basic fairness and due process require that the right not be dissipated ... because ... counsel failed to abide by a promise to either file or prosecute an appeal." People v. Montgomery, supra at 132. The dissenting opinion in Montgomery does not disagree with the principle that late appeal should be allowed where the lawyer promised to take an appeal and then failed to do so.

Wherefore, it is hereby ordered, that the people's motion is denied and the defendants' cross motion is granted and the Notice of Appeal filed and served on February 13th and 14th are hereby deemed timely.

This Decision constitutes the Order of the Court.

DATED: Rochester, New York
June 19, 1990

David D. Egan

HON. DAVID D. EGAN
MONROE COUNTY COURT JUDGE

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